Supreme Court, U. S.
FILED
DEC 1 1980
MICHAEL RODAK, JR., CLERK

No. 80-713

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF: HURON DIE CASTING, INC.,
Bankrupt
HURON DIE CASTING, INC., AND
NAG ENTERPRISES, INC.,
Petitioners,
v.
CREDITORS' COMMITTEE OF HURON DIE CASTING, INC.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ATTORNEYS FOR RESPONDENT

ARTHUR H. RICE, ESQUIRE
Rice, Rice & Gilbert
Of Counsel for Respondent
2956 City National Bank Bldg.
Detroit, Michigan 48226

MILTON F. MALLENDER, ESQUIRE
Dahlberg, Mallender & Gawne
Attorneys for Respondent
1022 Ford Bldg.
Detroit, Michigan 48226

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

INDEX OF AUTHORITIES

Page

Cases:

In re Butts, 123 F. 2d 250 (2nd Cir. 1941) 2

In re Carlucci Stone Co., 269 F. 795 (D.C. Pa., 1920) 2

In re Newton, 107 F. 429 (8th Cir.) (1901) 2

In re Snyder, 4 F. 2d 627 (9th Cir. 1925) 2

In re Thomas, 204 F. 2d 788 (7th Cir. 1953) 2

Mohonk Realty Corporation v. Wise Shoe Stores, 111 F. 2d 287 (2nd Cir. 1940) 2

Scharmer v. Carrollton Manufacturing Co., 525 F. 2d 95 (6th Cir. 1975) 2

Other:

6 Remington on Bankruptcy, Section 2972-74 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF: HURON DIE CASTING, INC.,
Bankrupt
HURON DIE CASTING, INC., AND
NAG ENTERPRISES, INC.,
Petitioners,
v.
CREDITORS' COMMITTEE OF HURON DIE CASTING, INC.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

This Opposition to the Petition for a Writ of Certiorari addressess itself solely to Petitioner's "Reasons for Granting the Writ" — pp. 9-12, Petition.

There is no diversity of views between circuits.

The view is uniformly held that no special formal procedure applies to the reopening of an estate. *In re*

Thomas, 204 F. 2d 788 (7th Cir. 1953); *In re Newton*, 107 F. 429 (8th Cir. 1901); *In re Carlucci Stone Co.*, 269 F. 795 (D.C. Pa., 1920); *In re Snyder*, 4 F. 2d 627 (9th Cir. 1925).

The view is uniformly held that reopening rests in the sound discretion of the Bankruptcy Judge. *Scharmer v. Carrollton Manufacturing Co.*, 525 F. 2d 95 (6th Cir. 1975); *Mohonk Realty Corporation v. Wise Shoe Stores*, 111 F. 2d 287 (2nd Cir. 1940); *In re Butts*, 123 F. 2d 250 (2nd Cir. 1941); 6 Remington on bankruptcy, Section 2972-74.

These views were followed by the District Judge in this case, and by the Court of Appeals in this case:

The District Judge said:

> "We have a situation here while the judge got the cart before the horse, in effect making a decision to reopen on the promise of filing of a petition without examining the petition first, the amended petition or petition that was to be filed. He later on in an adversary proceedings reaffirmed the fact he is satisfied the allegations are sufficient and we are dealing here not with what I think I would do under the circumstances but whether or not there is an abuse of discretion and I must conclude that the abuse — that Judge Hackett did not abuse his discretion in reopening the estate and that will be the Court's determination."

The Court of Appeals said:

> "It is well settled that requests to reopen estates lie within the sound discretion of the bankruptcy

> court. *Scharmer v. Carrollton Manufacturing Co.*, 525 F. 2d 95 (6th Cir. 1975). See also *Maryland Hotel Supply Co. v. Seats*, 537 F. 2d 1176 (4th Cir. 1976). It must be determined whether a reasonable prospect of producing unadministered assets exists. *Sterling National Bank v. Boyajian*, 127 F. 2d 713 (2d Cir. 1942). The purpose of the reopening was to examine Gage and Basil Briggs, a Meridian director. Gage had executed the petition for arrangement and the schedules and Statement of Affairs. Less than five months before filing bankruptcy Gage had received Huron's capital stock, a $700,000 note, and an unconditional guarantee on the note. These two men possessed certain knowledge which in the opinion of the bankruptcy judge justified reopening the estate. The yet unsettled status of the promissory note itself is another factor weighing in favor of the judge's decision, based on clear, objective factors and well within his sound discretion."

The foregoing dispose of the first three of the "Questions Presented" by the Petitioners.

That there was no "evidentiary hearing," which Petitioners assert was in violation of the Due Process Clause, arises from the simple fact that the reopening was for the specific purpose of examining witnesses with knowlege of the facts. That examination, when it occurs, will be in full accordance with applicable law and procedure, and its holding cannot constitute a denial of due process.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Milton F. Mallender
DAHLBERG, MALLENDER & GAWNE
Attorneys for Creditors Committee
1022 Ford Building
Detroit, Michigan 48226

and

Arthur H. Rice
RICE, RICE & GILBERT
Of Counsel
2956 City National Bank Building
Detroit, Michigan 48226